# Canons of Construction

Volume 37, Number 7 The Law Students' Newspaper Feb 13, 2006



Career Day Candid

Photo by Vista Pourbahrami

# **Doing the Dignity Dance**

Allison Eng (2L)

If Chief Justice McLachlin's decision in Auton (a case on the s.15 right to equality involving autistic children) was submitted as a paper in Pat Paradis' human rights law course, well, Beverly, I'm afraid that your gold medal status would be in jeopardy.

It wasn't the final decision that Ms. Paradis struggled with, but rather the court's approach. Rather than using a contextual approach, the court engaged in a mechanical application of the 3prong approach for discrimination enunciated in Andrews. Even more alarming was the fact that the decision concluded after discussing only two of the three 'prongs' and the four and purposive considerations that were added by Justice Iaccobucci in Law were entirely ignored. There's more, but let me take a step back and provide some context to this critique.

Ms. Paradis, who currently teaches

in the faculty and is an active member of LEAF, discussed the topic of equality at a lunch lecture sponsored by the Women's Law Forum and LEAF on January 31. She guided us through the development of the s.15 right to equality and its recent application in the Auton case. Ultimately, the question to be answered was, "what is equality?"

In reviewing the history of the right to equality, Paradis stressed the importance of applying a contextual and purposive approach to each case and understanding the purpose of the s.15 right to equality.

The contextual approach to equality was adopted in the first seminal case, Andrews (1989) and confirmed in the subsequent case of Law. Paradis noted that in Law (1999), Justice Iaccobucci outlined four additional purposive and contextual considerations, and called them "broad inquiries", emphasizing that the considerations were not

exhaustive. Unfortunately, in Andrews, subsequent cases adopted the 3-prong test for discrimination, but overlooked the contextual aspect. Even after Justice Iaccobucci revived the contextual approach in Law, the courts have since applied his four contextual and purposive factors in a strict fashion, contrary to his non-exhaustive intentions.

Iaccobucci then dwelled on the purpose of the s.15 equality provision, and after reviewing various suggestions in prior cases, he latched onto the concept of dignity. Thus, he declared that the purpose of the right to equality is to prevent the violation of human dignity. So, what is human dignity? Human dignity, in Iaccobucci's words, "means that an individual or group feels self-respect and self-worth...[it] is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities or merits. It is enhanced by cases which are sensitive to

... Continued on page 3

# From Your VP SOCIALS

Jennifer Young (3L) & Laura Gill (2L)



Photo by Justyna Herman

Gowlings and the LSA sponsoring our next big event, the Carbolic Smoke Ball, which will be held on Thursday, February 16th at the Crown Plaza Hotel. We will be selling tickets at the couches on February 6, 7, and 8. Tickets will be sold in tables of 8, at a price of \$45 for LSA Members and \$50 for Non-LSA Members, including guests. If you only want to come to the dance, we are selling tickets for \$10. Voting will also take place at ticket sales for the annual Professor Hopp Award for professor participation. Make sure that you have taken a look at the menu selection posted on the LSA board so that you can tell us what you will be eating that evening (beef, fish, or vegetarian).

Cocktails will begin at 6pm, dinner is at 7pm, and the dance starts at 9pm.



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There will be several door prizes raffled off, as well as a couple of new surprises for all guests. If you would like to reserve a room, the Crown Plaza is giving law students a special rate for the evening. Call the hotel at 428-6611 for details. We are only selling 350 tickets, so make sure to get your tickets

early!

Other upcoming events include the Winter Carnival that will be taking place after Reading Week on March 3-4. On the Friday, we will be holding a Curling Bonspiel and a FABS. Depending on the snow, we will be going tubing on Saturday.

More information will be available soon. Also to look forward to in March is a mixer with the Med. students on March 24, as well as upcoming LSA elections.

Thank you for all of your participation, and we can't wait to see everyone looking fabulous at





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free exchange and expression of thought, opinions and ideas.

All law students and interested parties in the legal community are encouraged to contribute submissions, provided that contributions are accompanied by name, student number and telephone number. No articles are published anonymously. Canons reserves the right to edit submissions for content, length, and legality. Canons will not publish materials deemed by the board to be racist, sexist, homophobic or libelous. Ideas and opinions expressed in Canons do not necessarily reflect the views of the Canons board.

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### **Dignity Dance**

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the needs, capacities and merits of different individuals, taking into account the context underlying the differences...Human dignity is ... enhanced when laws recognize the full place of all individuals and groups within Canadian society...[it] concerns the manner in which a person legitimately feels when confronted by a particular law."

This definition of dignity was avoided by the Supreme Court of Canada in the Auton decision. In that case, a group of autistic children claimed to be discriminated against (under s.15) by the government's refusal to fund their treatment. Adding to the controversy was the annual cost of treatment per child, which hovered around \$50,000. The children lost in the appeal to Supreme Court of Canada. Paradis' criticism of the judgment was threefold: first, it improperly placed emphasis on the legislation rather than the complainant; second, it dwelled too much on identifying the proper comparator group (to determine whether there was discrimination); third, it

applied Law in a strict manner, not contextually. Further, Paradis questioned the value of Iaccobucci's decision in Law, as he appeared to 'dance around' in his judgment. Unsure of whether his definition of dignity added clarity to the meaning of equality, she left us with a figurative portrait of equality as a pair of dancers sweeping across the dance floor, whose grace and harmony cannot be separated into any number of steps or approaches. With equality, there are no steps or approaches that can capture its presence or essence.

## Memoirs of a Dancer...

Cam Bowman (3L)

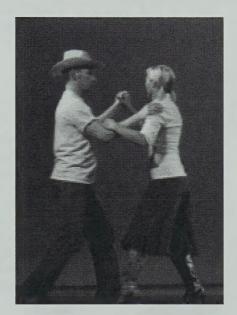
I know it seems like this article is one issue late, but I assure you that it is in its correct place. You see, you always need time to relax and reflect (or, if you prefer, sober up) after Law Show before you are truly able to put the experience into words. Also, I just woke up from the party after the second show.

Anyway, that marks an end to three years of honing my dance skills and embarrassing myself in the name of charity. As you may have noticed, I still suck despite all that honing. You would think that after so many practices, being yelled at so many times, and all those lashings with the whip I would learn what a box step is, but no. I have messed up a lot of moves over the years.

Now, having done all of this, I have experienced most of the ins and outs that law show has to offer. I know that many of you were involved in law show in one way or another, but for those of you who were not, my experience allows me to give to you a comprehensive guide of how to best survive. Think of it as memoirs of a dancer.

It starts early in September with Clubs' Day. The only reason I mention this is the relatively good candy that is always available at the Law Show table. Make sure to pick some up (last year they had those delicious caramel things). Also, be assured that this is not the last encounter you will have with leftover Halloween candy. After practices get started (every Sunday, 6-8, which is perfect timing to miss any football that you might have wanted to watch that night) everyone starts to get to know one another, which is important seeing as how you will soon be embarrassing yourselves together. Also, before I forget – the directors always

bring tasty treats on the first night as a bribe for you to stay in Law Show. Another treat not to be missed.



It continues in this pattern until sometime in late November when there is a break for exams. At this point, it is a classic rookie mistake to be concerned because you don't know the moves. Everyone will say "don't worry, you'll learn the moves in January". The problem is that this is only partly true - I grant you that you'll get better as you go along, and that the learning curve goes up dramatically in January. However, the fact of the matter is that if you're anything like me it's impossible to learn all the moves. This means you have to come up with an alternate method of survival. I'll give you two of my favorites: a) make sure that you are in the back line of the dance, which is never too hard, and b) drink enough so you think that you can dance. Of course, you need to make sure that you are coherent enough to do all the moves; you wouldn't want to drop anybody.

Now I'm going to fast forward to the week of the show. First of all, a piece of serious advice: have fun. It is easy to get tired of all the practices and the sitting around that inevitably happens, but try to keep in mind that this is a time of year where your responsibilities are relatively few, and you have a good opportunity to hang out with your old friends and to make new ones. So seriously, enjoy yourself.

Moving on, this is when the leftover Halloween candy that I mentioned earlier makes a reappearance. You can pretty much live on the stuff this week, if you don't mind losing all your teeth. Also, make sure that you go to Marco's Famous at least once during this week. Order a super donair, sit down, and don't get up until you have finished it. Try to finish it without spilling half the sauce all over yourself. I was never able to do it.

Other than that, make sure you take a chance to view as much of the show as possible during the practices, because you'll regret it later if you don't. Also, not that it really needs to be said, but make sure you go to the parties after the show. They are usually some of the best parties of the year, a time where you get to laugh about what went wrong and celebrate what went right.

Now, while this may come across as an inducement to enter Law Show in your subsequent years here at the school, that's not necessarily the case. You see, one of the best parts of law show is meeting with your friends afterward so they can tell you how stupid you look. If everyone was in the show, who would be left to point out how much of an idiot you are? So my memoirs really aren't so much recruitment oriented propaganda as my reveling in drunken memories of not being any good at dancing. But if you do happen to join the show, I'll be the guy in the fourth row booing and throwing things on stage. Look for me.

### Harkening Back to the Days of Yore... **NOTE: THIS COULD BE YOU IN 20 YEARS!**



Professor Hopp - 1979

"Girls love a man who really knows his Sale of Goods."

"Even Professor Hopp can't get enough of Professor Hopp; he's all over himself!" "You know, I still haven't gotten around to grabbing a professor by the leg while in Law School. Maybe in third year."

#### Professor Robertson - 1981

"Even in 1981 Professor Robertson had an out-of-date fashion sense; that sweater vest and tie combo is so 1974."

"I'll wager Law Show didn't so much make up the skit for Professor Robertson's Neighbourhood as they happened across this picture and it came to them

"What on earth is going on with his hair? It's like he was so worried about eventual hair loss that he starting preemptively combing it over when it was still all there. You can't see his ears!"





Professor Renke - 1986

chewing tobacco."

Professor Wood - 1987

"This picture was taken in 1987? The man hasn't changed in the slightest. I think he actually wore that same tie in his current faculty profile picture." "His clothes say 1987, but his eyes are singing "sex bomb, sex bomb, you're my sex bomb"...

"Lavalife profile #5644: Professor Wood. Likes long walks on the beach, watching old movies and inverting priorities by petitioning debtors into bankruptcy."

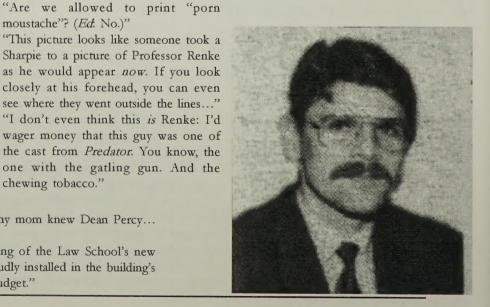


Dean Percy - 1979

"And the winner of both showcases is...!"

"Hey, I was born in 1979. And I didn't know my mom knew Dean Percy... what's she doing in this picture?"

"Dean Percy and guest attend the 1979 unveiling of the Law School's new 6" black and white bulletin board television: proudly installed in the building's foyer for only \$4.95, half the school's yearly budget."



Hometown: Halifax, Nova Scotia.

Undergrad Studies: Criminology/Sociology, Saint Mary's University.

If you were allowed to wear whatever you wanted under the robes in court, what would it be?

A t-shirt that says, "Law Girls get you off" and pi bottoms.

What weird exam rituals do you have? Studying my notes right to the last minute and wishing the people around me good luck.

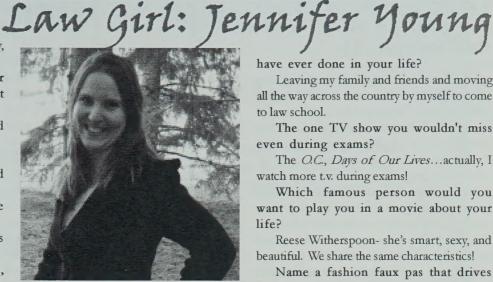
If you could have an afternoon with one person dead or alive, who would it be?

Dale Earnhardt, JR- I'd ask him what really gets his engine going!

If you could go anywhere in the world, where would it be?

London, England to find Prince William. I think I would make an excellent Queen!

Favourite cartoon show from when you



were younger you wish they would bring back?

Jem and She-ra, Princess of Power. What was the scariest thing you have ever done in your life?

Leaving my family and friends and moving all the way across the country by myself to come to law school.

The one TV show you wouldn't miss even during exams?

The O.C., Days of Our Lives...actually, I watch more t.v. during exams!

Which famous person would you want to play you in a movie about your

Reese Witherspoon- she's smart, sexy, and beautiful. We share the same characteristics!

Name a fashion faux pas that drives

Guys who wear baggy pants that hang past their butt and then cover it up with a long tshirt-really, can that be comfortable?!

# Law Guy: Chris Bruce

Hometown: Calgary, Alberta. Undergrad Studies: Business.

If you were allowed to wear whatever you wanted under the robes in court, what would it be?

In homage to the one and only Brett Plaizer... a speedo and T-shirt that reads "No Fat Chicks". Oh, and on the buttcheeks, it would have "BRU" on the left and "CEY" on the right.

What weird exam rituals do you have? 20 minutes of studying followed by 2 hours of X-Box. Strict 'Meat only' diet... mmmmm steak!

If you could have an afternoon with one person dead or alive, who would it be?

Our LSA Prez Alex Sajan... Have you seen that guy dance?

If you could go anywhere in the world, where would it be?

New York City... hello cheesecake.

Favourite cartoon show from when you were younger you wish they would bring back?

Transformers... More Than Meets the Eve.

What was the scariest thing you have ever done in your life?

Told an off colour joke to my LRW prof who quickly gave me the biggest Grade Point demotion in a course she possibly could. Picture the demolition of a skyscraper... Amazing how fast an A turns into a B-.

The one TV show you wouldn't miss even during exams?

The Fireplace Channel... ahhhh, so many wasted hours. Did you ever see the hand?

Which famous person would you want to play you in a movie about your life?

C. Montgomery Burns; twisted, sadistic, enjoys a good chuckle as well as the occasional Coke.

Name a fashion faux pas that drives you crazy.

Girls who have such beautiful blonde hair and yet continue to dye their roots brown. Why? Why?



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1) Adam Elwi – 605 points

2) Josh Stuchnick – 594 points 7) Travis Lidstone – 573 points

3) Steve Heagy - 585 points

4) Matt Staric - 583 points

5) Vincent Kurata – 580 points

6) Greg Pratch - 577 points

8) Farrel Greenspan - 571 points

9) Travis Lidstone - 569 points

10) Nathan Po - 551 points

And last, but not least: 99) Michael Klaray – 381 points

Moscow

Almaty/Atyrau Caracas Rio de Janeiro

## Higher, Faster, Stronger OLYMPIC Preview

Cam Bowman (3L)

Have you ever heard the Tragically Hip song "Fireworks"? It talks about the 1972 hockey series between Canada and the U.S.S.R. (as they then were). It is a reminder of how much that series meant to Canadians. The only problem for our generation is that most of us were not alive at the time. Thus, the only way we can relive the experience is by watching videos, listening to songs, and feeding Grandpa more bourbon as he relates his memories of the event. For most of us, likely our best international hockey-related moment came four years ago, when Canada won both the men's and women's Olympic gold medal in Salt Lake City.

Well, guess what. It's that time again. It's time to once again beat off all the challengers to the throne and remind the rest of the world of our hockey superiority. Of course, I'm talking about the 2006 Olympics which take place February 10 – 26 in Torino, Italy. So, without further ado, I present the *Canons of Construction* Olympic Preview.

#### Men's Hockey

This is obviously the event that I am most interested in, so it is the event that I will write the most about. That also makes it the event that you will read the most on (you wouldn't dare skip ahead). Canada enters the tournament as the favourite, although they will have some stiff competition.

Don't count on a rematch of the Canada – U.S.A. gold medal match in 2002, as the Americans are either too old (Chris Chelios, their captain, is 44, making him the oldest American to ever compete in an Olympic hockey tournament) or too inexperienced. In addition, their goaltending, always an important position, is a notch below most of the other teams (sound familiar, Edmonton?).

As for the Russians, they have always been able to score goals. They have talent in net in the form of Evgeni Nabokov, defensemen who can move the puck (although not necessarily play defense) and forwards who can score. Add that to the fact that they have very few injury concerns, and they are likely Canada's toughest opposition. The best hope for the Great White North is that Nabokov will play like he has this year (which is to say rather poorly) rather than like he did last year in leading the Sharks to the Western Conference Finals (before being beat by the Flames – sorry, had to mention that).

Team Finland has had success at recent international hockey tournaments, including a silver finish at the World Cup of Hockey in 2004. However, they will sorely miss Miikka Kiprusoff,

who will skip the tournament because of a hip injury. It's not so much that their replacement goaltenders will lose them a medal, but rather that 'Kipper' may have single-handedly won them one. They don't have enough talent up front to make up for losing him, and I'd be surprised to see them on the medal podium.

The Swedes might surprise some people, although they also have injury problems in that Markus Naslund, the talented Vancouver Canuck, will miss the tournament. However, they still have someone who is capable of carrying the team — Peter Forsberg. Also, they have experienced leaders like Nicklas Lidstrom on defense. Once again, goaltending is not likely their strongest position, as they will likely have rookie Henrik Lundqvist in net. Of course, he can't be worse than Tommy "Belarus" Salo, can he?

That leaves the Czech Republic and Slovakia. The Czech's goaltending situation might be the best of any team, with both Dominik Hasek and Tomas Vokoun available. They also have the NHL points leader on their team in the form of Jaromir Jagr and a solid supporting cast including Martin Straka and Milan Hejduk. I'd say the Bronze medal will be between them and Sweden. As for the Slovaks, they do have one or two top tier NHLers, most notably Peter Bondra and Marian Hossa, but compared to the other teams they are woefully thin. Not that they will be a pushover, but it would definitely be a surprise to see them in the top 5.

Of course, that leaves Canada, my slightly biased pick for gold. Talented and experienced at every position, they are deep enough that the recent rash of injuries to defensemen Ed Jovanovski (or 'Special Ed' as Flames fans called him in last years playoffs) and Scott Niedermayer can be compensated for. So, the final prediction is:

1) Canada 2) Russia 3) Czech Republic 4) Sweden 5) USA 6) Finland 7) Slovakia

#### Women's Hockey

I am rapidly running out of room in this column, so I'll ignore the rest of the world except for Canada and the U.S.A. They have faced each other in every Olympic and World Championship final ever held in this sport, so it's a safe bet to say that they will meet again. They are so closely matched, it's a toss up to determine the winner. One day it could go one way, the other day the other way. Obviously I'm picking Canada, but that is really only based on subjective feelings, rather than an objective comparison. Not that you couldn't find for Canada objectively, it's just that you can

make an equally strong case for the USA, so that only leaves personal bias to tilt the scales. Go Canadal

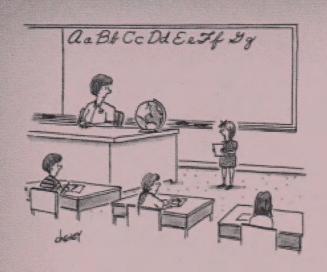
### Other Sports

Hmmm, lets see, what else do we have? Canada always has a strong speed skating contingent, and from what I hear this year is one of the strongest we have ever had. Look for a serious medal haul from that team. As a bit of a side note, make absolutely sure that you watch as much short-track speed skating as possible. It is roller derby on ice, one of the most enjoyable things ever watched. In the men's 1,000 metre final in Salt Lake, the four skaters in front of the pack all fell on the final turn, leaving the gold medal path wide open for Australian Steven Bradbury to take his country's first ever winter gold medal. An event not to be missed.

Figure skating is popular, and ..... what? Jamie Sale is not in it this year? Oh, well I guess no reason to watch then. Moving on...

All right, I know that there are some serious fans of this sport out there, so I'll spend just enough time on this topic to say that I'm hoping for another judging controversy this year. That way, you don't ever have to change the channel during the Olympics — you have sports, scandal, sex (ever seen the costumes those figure skaters wear?), and Ron MacLean's sweaters all in one. What more could you ask for? Seriously, check out MacLean's sweaters — exactly like the one your grandma knitted for you. Sadly, I don't think that it made its way into The Bay's Olympic clothing line.

Other than that, there is the usual stable of sports that you watch at 3 a.m. during the Olympics, but would never watch otherwise. These include luge, biathlon, cross country skiing, bobsled, ski jumping and the like. Other than Pierre Leuders (from Edmonton, I will point out in an effort to avoid calls of favoritism) in bobsled, I honestly have no idea if Canada has medal chances in any of these. I'm sure there are talented and dedicated athletes representing our country in all of these, and of course they have my full support. To them I say - put out a calendar, do a commercial, or start a drug scandal, but do something. Otherwise you'll never become a household name (right Ross Rebagliati?). That's about all I've got for you, hope it serves your purposes. Hope you enjoy the games, and Go Canada Go!



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### **Super Bowl Recap**

### Kyle Kawanami (3L)

I'll apologize to regular readers of this column (assuming that there are any) that my relative lack of familiarity with the inferior brand of North American football may make me less of an able Super Bowl commentator. Given that the game is usually an afterthought in Super Bowl week, I contemplated the idea of putting together a Super Bowl article which ignored the game entirely. However, since we can't get the American commercials up here and I didn't watch much of the pre-game stuff, that would make for a very short article indeed.

Anyway, as to the game itself, this Super Bowl saw a number of records fall: longest rushing touchdown from scrimmage, longest interception return, youngest winning quarterback, first touchdown pass by a wide-receiver. That being said, while the outcome was still in doubt up to the last seconds, I doubt this one will be remembered as a classic.

After spending the first quarter getting shut down like your author at a law social, the Steelers' offence managed to kick it into gear towards the end of the first half with a successful drive ending in a disputed touchdown. Seattle had earlier settled for a field goal after a controversial pass interference call denied them a touchdown. Right before the half, Matt Hasselback attempted to break Donovan McNabb's year-old record of "Worst Execution of a 2-Minute Drill in the Super Bowl". If successful, the record-was short lived.

After the Rolling Stones halftime show, the Steelers bolstered their lead with a 75 vard touchdown run by Willie Parker. In spite of all the Jerome Bettis hype leading up to the game, the Bus never did get in the endzone. The Seahawks had their series of events of the game when replacement Hernden picked off corner Roethleseberger pass at the 6 (which would have put the Steelers up 21-3) and ran it back 76 yards, setting up a Jerramy (that actually isn't a typo) Stevens touchdown. Stevens, of course, was the player getting into a war of words with Pittsburgh's Joey Porter in the lead up to the game.

Anyway, Mr. Stevens was prominent on the next significant play of the game as well. After driving from their own 2 yard line,

Hasselback had a completion to Stevens at the Pittsburgh 2 called back due to holding. This was followed by a sack and an interception, which eventually set up Antwan Randall El's touchdown pass (in what was probably the best pass of the game thrown by either team) to Hines Ward on a fake reverse. That was about it, apart from Matt Hasselback breaking his first half record of "Worst Execution of a 2-Minute Drill in the Super Bowl".

As far as general thoughts on the game, as an impartial observer I thought that the Seahawks had to cope with a number of questionable calls. Officiating has been a distraction in a few games these playoffs (New England - Denver and Pittsburgh -Indianapolis to name two others), so I'm curious as to whether that will be a hotter topic than usual this off-season. That being said, Seattle also did themselves no favours with a number of untimely drops and penalties which could not be blamed on officiating. The game also offers a nice story, with Jerome Bettis winning his last game in his home town, as well as the Steelers winning their first Super Bowl since 1979 after knocking off the top 3 AFC seeds and the top NFC seed. Finally, while perhaps not a classic, this game was certainly much better than some of the blowouts of years past, with a fair degree of tension and uncertainty right up until the

### Advice: WHO ASKED YOU?!

Question: How do I know if I have a drinking problem?

She Said: Well, if you're in law school, that is definitely a contributing factor. My conviction that most law students have drinking problems was solidified at last year's Law Show after party. For some inexplicable reason they decided to stop serving alcohol at 12:00 even though the party was supposed to go on until 2:00. I happened to be one of the last people in line when they started closing the gates behind us. The incident that transpired reminded me of that scene from Titanic where they closed the gates on the third class, and when they realized they were going to drown, they began to frantically tear down the gates. I'm not really one to criticize though, because upon being handed money by several people and begged to buy drinks for them, I yelled "we're only allowed to buy two drinks, and I need both of them!" So I propose that next year we make AA one of the law clubs and we can all put it on our resumes.

He Said: "Problem" is a strong word. Sure, so you enjoy having a few beers after class with your friends; that's hardly a drinking problem.

And when you're out with the firm and you're offered a glass of wine, I don't see a problem with partaking. And who doesn't like a good party when exams are over? There's no problem with letting the good times roll; you're just blowing off a little steam. Similarly, that extra little kick in your coffee each morning is just to get you on your game; there's no problem with that. It isn't like you're hurting anyone. And hey, if anyone can get through a three hour class of professional responsibility sober, I'd like to meet them. There's certainly no problem with a nip of courage now and then to make sure you can get through law school; it's likely quite the opposite. The bourbon you have stashed all around the house? That's for convenience: no one likes having to get up and look around for the stuff. No problem there. Maybe it's everyone else who has the "problem". If they'd all just back off and mind their own business, there'd be no problem at all; I think it's everyone else who has the problem.

Question: Dear Advice Persons: I just got my \$400 rebate from the

province! Any ideas on what I could do with it?

She Said: I'll tell you where you can stick itl Ed: Please note that "She" is from BC, and her government can't give her anything because of the gross incompetence of BC's previous NDP governments who ran the province into the ground.

He Said: Well, for my part, I'll be throwing it against the still-mounting pile of debt that Law School has been racking up. That'll bring it down what, 0.1%? If having a positive net worth sometime before retirement isn't as pressing a concern for you, the money could always be used to alleviate some of the hardships we endure every day at the school. You could invest in an extension cord, for instance, or in a portable digital clock the professor could see — so that class ends on time. And hey, if we all chipped in our \$400, we could buy another plasma screen! Think of it; we could be twice as informed of upcoming school events as ever before: a fitting tribute to what is essentially a waste of 2 billion dollars.

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